IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2448 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BARDOLI NAGARPALIKA

Versus

WORKMEN

Appearance:

1. Special Civil Application No. 2448 of 2000

MR PANDYA for HL PATEL ADVOCATES for Petitioner No. 1

MRS PAHWA for M/S THAKKAR ASSOC. for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/10/2001

ORAL JUDGEMENT

#. Rule. Mrs.Pahwa waives service of rule for respondent No.1. With the consent of the parties, the

matter is taken up for final hearing today.

#. The petitioner - Nagarpalika has challenged the award passed by the Industrial Tribunal, Surat on 1.12.1999 in Reference (IT) No.31 of 1997. By the aforesaid award, the Nagarpalika is directed to give status of permanency to those workmen on whose behalf the reference was filed. It is also directed that such workmen should be given the benefit of gratuity, pension, seniority etc. and whatever difference is required to be given, should be given to them from 1.1.1995. The said industrial dispute was raised by the association on behalf of its members on the ground that the concerned workmen are serving since last so many years starting from 1981 onwards as sweeper, drainage operator, peon, clerk etc. in the Nagarpalika. A list of these workmen is incorporated in the award which is at page 13 onwards. After appreciation of the evidence on record, the Tribunal came to the conclusion that considering the fact that these workmen are serving since long and some of them are serving since last 20, 15 or 10 years, it would be unjust to continue them as Rojamdar, and, therefore, ultimately it was ordered that the concerned workman should be given the benefit of permanency from 1.1.1995 and they should be paid difference of the pay-scale accordingly. The said award is challenged by the Nagarpalika by filing this petition.

#. At the time of hearing of this petition, it was argued by Mr.Pandya, appearing for the Nagarpalika, that, there are 73 sanctioned posts in the Nagarpalika and that the Nagarpalika has already sent the proposal to the State Government for the purpose of recruitment on the said posts. According to Mr.Pandya, the said proposal is still pending with the Director of the Municipalities. Mr.Pandya has also pointed out that, in order to see that the dispute can be settled amicably with the help of the State Government, he has joined the Director of the Municipalities as party respondent in this petition. However, learned AGP Mr.R.V.Desai strongly objected the aforesaid move on the part of the Nagarpalika to join the Director of the Municipalities as party respondent as according to Mr.Desai, the State was not a party before the Industrial Tribunal and in the petition which is in the nature of the petition under Article 226/227 of the Constitution of India, no additional points could have been allowed to be urged and the petition is required to be confined only to the proceedings of the Industrial Tribunal. Mr.Desai has also argued that, now a days, it is the modus operandi to recruit some relatives of the President of the Municipality, and on the ground of favouritism and nepotism such recruitment are made and

ultimately financial burden is fastened on the State Government. In view of this strong resistance on the part of Mr.Desai, Mr.Pandya requested the Court to allow the petitioner to delete the Director of the Municipalities as party respondent from these proceedings. Permission is granted. However, I find some substance in the argument of Mr.Desai to the effect that there is a modus operandi in some Municipalities to recruit the relatives of the President or office bearers of such Municipalities and in many cases such appointments are made by way of favouritism and nepotism by-passing the Recruitment Rules and ultimately the State Government is compelled to incur financial burden. It would be desirable that the State should inform all the Municipalities by giving specific directions to its Chief Officer/Administrator/President not to make any recruitment without prior permission from the State. If the State is interested in solving this disease and if really the State is willing to see that such situation is avoided and also to prevent such incident to occur repeatedly, all the municipalities should be informed specifically that, if there is a breach of the directions of the Government, the Government will be compelled to take stringent action or even the action regarding superceding such Municipalities. Unless some strict action is taken by the Government by informing the Municipalities in appropriate manner in advance, it is very difficult to prevent such situation. It is required to be noted that, so many References are pending in various industrial forums like Labour Court, Industrial Tribunal etc. wherein a prayer for regularisation is made. It is hoped that the State will take this issue in proper manner and may consider issuance of strict directions. However, it is ultimately for the State Government to decide as to what line of action should be taken to remedy the situation prevailing practically in all the Municipalities in the State.

#. So far as the present petition is concerned, learned advocate Mrs.Pahwa for the respondent states that, in the present case, looking to the need, appointments were given, and, therefore, there was no question of nepotism and favoritism. Otherwise also, no such point was canvassed before the Industrial Tribunal. Therefore, so far as the present petition is concerned, I am required to consider reasoning and arguments advanced before the Industrial Tribunal.

#. Mr.Pandya has also fairly stated that the Municipality is in need of service of these workmen and not only that, the Nagarpalika has also requested the

State to allow them to make recruitment on the sanctioned post, since no appointment was made on the sanctioned post even though there are 73 sanctioned posts available with the Nagarpalika.

#. Considering the reasonings given by the Industrial Tribunal and considering the submission of Mr.Pandya, no interference of this Court is required in this petition except restricting the benefit of pay from the date of the award of the Industrial Tribunal, instead of giving the said benefit of difference in the pay with effect from 1.1.1995 which is ordered by the Industrial Tribunal. It is agreed by both the sides that, actual monetary benefit is required to be given from the date of the award of the Industrial Tribunal and for that purpose, it is agreed by both the sides that the order of the Industrial Tribunal may be suitably modified. It is accordingly ordered that the concerned workman will be entitled to the benefit of monetary claim as well as regular pay scale with effect from 1.12.1999 i.e. from the date on which the award of the Tribunal was passed. However, concerned workman will be entitled to other benefit of regularisation including continuity of service etc. as per the order of the Tribunal and the concerned workman will be entitled to the pensionary benefits as per the observations made by the Industrial Tribunal and so far as actual monetary benefit is concerned, as stated earlier, the same is to be given only with effect from the date of the award of the Tribunal. Rest of the award of the Tribunal is not disturbed. It is clarified that, other benefits which are given to the concerned workman as per the award of the Tribunal should be treated as notional benefits and actual monetary benefit is to be given from 1.12.1999 and the benefit prior to 1.12.1999 should be treated as notional benefit, so that there may not be any additional financial burden on the Nagarpalika. It is clarified that this Court has not given any direction to the State Government in any manner and if there is any grievance on the part of the Nagarpalika against the State Government, it will be open for the Nagarpalika to take appropriate proceedings against the State Government. It will be open for the Nagarpalika to request the State Government by way of appropriate representation to allow the concerned workmen on whose behalf the award is given to recruit them on the sanctioned posts on regular basis and it is for the State Government to take appropriate decision in case such representation is made by the Nagarpalika.

#. Subject to what is stated above, the petition is partly allowed. Rule is made absolute accordingly with

no order as to costs.

(P.B.Majmudar,J)
(pathan)